

ASSEMBLY BILL

No. 873

Introduced by Assembly Member Bogh

February 18, 2005

An act to amend Section 2071 of, and to add Section 2084 to, the Insurance Code, relating to homeowners' insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 873, as introduced, Bogh. Homeowners' insurance: copies of policy.

Existing law generally regulates homeowners' insurance.

This bill would require an insurer under a homeowners' insurance policy to provide an insured with a copy of his or her policy within 30 calendar days of receiving a request from the insured.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2071 of the Insurance Code is amended
2 to read:
3 2071. (a) The following is adopted as the standard form of
4 fire insurance policy for this state:
5 California Standard Form Fire Insurance Policy
6
7 No.
8 [Space for insertion of name of company or companies issuing
9 the policy and other matter permitted to be stated at the head of
10 the policy.]

1 [Space for listing amounts of insurance, rates and premiums for
2 the basic coverages insured under the standard form of policy
3 and for additional coverages or perils insured under
4 endorsements attached.]

5 In consideration of the provisions and stipulations herein or
6 added hereto and of ____ dollars premium this company, for the
7 term of _____

8
9 from the _____ day of _____, 20 _____ } At 12:01 a.m.,
10 to the _____ day of _____, 20 _____ } standard time,
11

12 at location of property involved, to an amount not exceeding
13 ____ dollars, does insure ____ and legal representatives, to the
14 extent of the actual cash value of the property at the time of loss,
15 but not exceeding the amount which it would cost to repair or
16 replace the property with material of like kind and quality within
17 a reasonable time after the loss, without allowance for any
18 increased cost of repair or reconstruction by reason of any
19 ordinance or law regulating construction or repair, and without
20 compensation for loss resulting from interruption of business or
21 manufacture, nor in any event for more than the interest of the
22 insured, against all LOSS BY FIRE, LIGHTNING AND BY
23 REMOVAL FROM PREMISES ENDANGERED BY THE
24 PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS
25 HEREINAFTER PROVIDED, to the property described
26 hereinafter while located or contained as described in this policy,
27 or pro rata for five days at each proper place to which any of the
28 property shall necessarily be removed for preservation from the
29 perils insured against in this policy, but not elsewhere.

30 Assignment of this policy shall not be valid except with the
31 written consent of this company.

32 This policy is made and accepted subject to the foregoing
33 provisions and stipulations and those hereinafter stated, which
34 are hereby made a part of this policy, together with any other
35 provisions, stipulations and agreements as may be added hereto,
36 as provided in this policy.

37 IN WITNESS WHEREOF, this company has executed and
38 attested these presents; but this policy shall not be valid unless
39 countersigned by the duly authorized agent of this company at

Agent

Concealment, fraud

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Uninsurable and excepted property

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money or securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

Perils not included

This company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that the fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this company be liable for loss by theft.

Other insurance

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Conditions suspending or restricting insurance

Unless otherwise provided in writing added hereto this company shall not be liable for loss occurring (a) while the hazard is increased by any means within the control or

1 knowledge of the insured; or (b) while a described building,
2 whether intended for occupancy by owner or tenant, is vacant or
3 unoccupied beyond a period of 60 consecutive days; or (c) as a
4 result of explosion or riot, unless fire ensues, and in that event for
5 loss by fire only.

6
7 Other perils or subjects

8 Any other peril to be insured against or subject of insurance to
9 be covered in this policy shall be by endorsement in writing
10 hereon or added hereto.

11
12 Added provisions

13 The extent of the application of insurance under this policy and
14 of the contribution to be made by this company in case of loss,
15 and any other provision or agreement not inconsistent with the
16 provisions of this policy, may be provided for in writing added
17 hereto, but no provision may be waived except such as by the
18 terms of this policy or by statute is subject to change.

19
20 Waiver provisions

21 No permission affecting this insurance shall exist, or waiver of
22 any provision be valid, unless granted herein or expressed in
23 writing added hereto. No provision, stipulation or forfeiture shall
24 be held to be waived by any requirement or proceeding on the
25 part of this company relating to appraisal or to any examination
26 provided for herein.

27
28 Cancellation of policy

29 This policy shall be canceled at any time at the request of the
30 insured, in which case this company shall, upon demand and
31 surrender of this policy, refund the excess of paid premium above
32 the customary short rates for the expired time. This policy may
33 be canceled at any time by this company by giving to the insured
34 a 20 days' written notice of cancellation with or without tender of
35 the excess of paid premium above the pro rata premium for the
36 expired time, which excess, if not tendered, shall be refunded on
37 demand. Notice of cancellation shall state that said excess
38 premium (if not tendered) will be refunded on demand. If the
39 reason for cancellation is nonpayment of premium, this policy

1 may be canceled by this company by giving to the insured a 10
2 days' written notice of cancellation.

3
4 Mortgagee interests and obligations

5 If loss hereunder is made payable, in whole or in part, to a
6 designated mortgagee not named herein as the insured, the
7 interest in this policy may be canceled by giving to the
8 mortgagee a 10 days' written notice of cancellation.

9 If the insured fails to render proof of loss the mortgagee, upon
10 notice, shall render proof of loss in the form herein specified
11 within 60 days thereafter and shall be subject to the provisions
12 hereof relating to appraisal and time of payment and of bringing
13 suit. If this company shall claim that no liability existed as to the
14 mortgagor or owner, it shall, to the extent of payment of loss to
15 the mortgagee, be subrogated to all the mortgagee's rights of
16 recovery, but without impairing mortgagee's right to sue; or it
17 may pay off the mortgage debt and require an assignment thereof
18 and of the mortgage. Other provisions relating to the interests and
19 obligations of the mortgagee may be added hereto by agreement
20 in writing.

21
22 Pro rata liability

23 This company shall not be liable for a greater proportion of any
24 loss than the amount hereby insured shall bear to the whole
25 insurance covering the property against the peril involved,
26 whether collectible or not.

27
28 Requirements in case loss occurs

29 The insured shall give written notice to this company of any
30 loss without unnecessary delay, protect the property from further
31 damage, forthwith separate the damaged and undamaged
32 personal property, put it in the best possible order, furnish a
33 complete inventory of the destroyed, damaged and undamaged
34 property, showing in detail quantities, costs, actual cash value
35 and amount of loss claimed; and within 60 days after the loss,
36 unless the time is extended in writing by this company, the
37 insured shall render to this company a proof of loss, signed and
38 sworn to by the insured, stating the knowledge and belief of the
39 insured as to the following: the time and origin of the loss, the
40 interest of the insured and of all others in the property, the actual

1 cash value of each item thereof and the amount of loss thereto, all
2 encumbrances thereon, all other contracts of insurance, whether
3 valid or not, covering any of said property, any changes in the
4 title, use, occupation, location, possession or exposures of said
5 property since the issuing of this policy, by whom and for what
6 purpose any building herein described and the several parts
7 thereof were occupied at the time of loss and whether or not it
8 then stood on leased ground, and shall furnish a copy of all the
9 descriptions and schedules in all policies and, if required and
10 obtainable, verified plans and specifications of any building,
11 fixtures or machinery destroyed or damaged.

12 The insured, as often as may be reasonably required and
13 subject to the provisions of Section 2071.1, shall exhibit to any
14 person designated by this company all that remains of any
15 property herein described, and submit to examinations under oath
16 by any person named by this company, and subscribe the same;
17 and, as often as may be reasonably required, shall produce for
18 examinations all books of account, bills, invoices, and other
19 vouchers, or certified copies thereof if the originals be lost, at any
20 reasonable time and place as may be designated by this company
21 or its representative, and shall permit extracts and copies thereof
22 to be made. The insurer shall inform the insured that tax returns
23 are privileged against disclosure under applicable law but may be
24 necessary to process or determine the claim.

25 The insurer shall notify every claimant that they may obtain,
26 upon request, copies of claim-related documents. For purposes of
27 this section, "claim-related documents" means all documents that
28 relate to the evaluation of damages, including, but not limited to,
29 repair and replacement estimates and bids, appraisals, scopes of
30 loss, drawings, plans, reports, third party findings on the amount
31 of loss, covered damages, and cost of repairs, and all other
32 valuation, measurement, and loss adjustment calculations of the
33 amount of loss, covered damage, and cost of repairs. However,
34 attorney work product and attorney-client privileged documents,
35 and documents that indicate fraud by the insured or that contain
36 medically privileged information, are excluded from the
37 documents an insurer is required to provide pursuant to this
38 section to a claimant. Within 15 calendar days after receiving a
39 request from an insured for claim-related documents, the insurer
40 shall provide the insured with copies of all claim-related

documents, except those excluded by this section. Nothing in this section shall be construed to affect existing litigation discovery rights.

Within 30 calendar days of receiving a request from the insured, the insurer shall provide the insured with a copy of this policy.

Appraisal

In case the insured and this company shall fail to agree as to the actual cash value or the amount of loss, then, on the written request of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of the request. Where the request is accepted, the appraisers shall first select a competent and disinterested umpire; and failing for 15 days to agree upon the umpire, then, on request of the insured or this company, the umpire shall be selected by a judge of a court of record in the state in which the property covered is located. Appraisal proceedings are informal unless the insured and this company mutually agree otherwise. For purposes of this section, “informal” means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery, no formal rules of evidence shall be applied, and no court reporter shall be used for the proceedings. The appraisers shall then appraise the loss, stating separately actual cash value and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two when filed with this company shall determine the amount of actual cash value and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by the parties equally. In the event of a government-declared disaster, as defined in the Government Code, appraisal may be requested by either the insured or this company but shall not be compelled.

Adjusters

If, within a six-month period, the company assigns a third or subsequent adjuster to be primarily responsible for a claim, the insurer, in a timely manner, shall provide the insured with a written status report. For purposes of this section, a written status

1 report shall include a summary of any decisions or actions that
2 are substantially related to the disposition of a claim, including,
3 but not limited to, the amount of losses to structures or contents,
4 the retention or consultation of design or construction
5 professionals, the amount of coverage for losses to structures or
6 contents and all items of dispute.

7
8 Company's options

9 It shall be optional with this company to take all, or any part, of
10 the property at the agreed or appraised value, and also to repair,
11 rebuild or replace the property destroyed or damaged with other
12 of like kind and quality within a reasonable time, on giving
13 notice of its intention so to do within 30 days after the receipt of
14 the proof of loss herein required.

15
16 Abandonment

17 There can be no abandonment to this company of any property.

18
19 When loss payable

20 The amount of loss for which this company may be liable shall
21 be payable 60 days after proof of loss, as herein provided, is
22 received by this company and ascertainment of the loss is made
23 either by agreement between the insured and this company
24 expressed in writing or by the filing with this company of an
25 award as herein provided.

26
27 Suit

28 No suit or action on this policy for the recovery of any claim
29 shall be sustainable in any court of law or equity unless all the
30 requirements of this policy shall have been complied with, and
31 unless commenced within 12 months next after inception of the
32 loss.

33
34 Subrogation

35 This company may require from the insured an assignment of
36 all right of recovery against any party for loss to the extent that
37 payment therefor is made by this company.

38
39 (b) Any amendments to this section by the enactment of
40 Senate Bill 658 of the 2001–02 Regular Session shall govern a

1 policy utilizing the form provided in subdivision (a) when that
2 policy is originated or renewed on and after January 1, 2002.

3 (c) The amendments to this section made by the act adding
4 this subdivision shall govern a policy utilizing the form provided
5 in subdivision (a) when that policy is originated or renewed on
6 and after January 1, 2004.

7 SEC. 2. Section 2084 is added to the Insurance Code, to read:

8 2084. An insurer shall provide an insured with a copy of his
9 or her policy within 30 calendar days after receiving a request
10 from the insured.